Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

NO. 79-1535

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

JOHN McGRATH,
Petitioner,

v.

STEVEN JOHN SLOTKIN, AN INFANT BY HIS MOTHER AND NATURAL GUARDIAN, CHARLOTTE SLOTKIN, AND CHARLOTTE SLOTKIN, AS EXECUTRIX OF THE ESTATE OF BERT SLOTKIN, DECEASED,
Respondents.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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OCTOBER 9, 1980

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CITATIONS

[None]

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In their "Opposition to Petition for a Writ of Certiorari", filed on or about May 8, 1980, respondents do little more than recite the course of proceedings in the lower courts. While it is not necessary to reply to that brief on the merits, it is necessary to correct a factual inaccuracy

which appears therein and which is repeated in respondents' briefs in the two companion cases, Nos. 79-1571 (Christopher McGrath v. Steven John Slotkin, et al.) and 79-1719 (American Mutual Insurance Company of Boston v. Steven John Slotkin, et al.).

Respondents assert that the trial judge dismissed the action against petitioner John McGrath in his decision of March 1, 1978.* ("Opposition to Petition for A Writ of Certiorari," p. 3). Respondents make the same assertion, by implication, in their briefs in Nos. 79-1571 (at p. 7) and 79-1719 (at p. 5). These assertions are the predicate for respondents' argument that, because the trial judge based his March 1, 1978 decision -- with which the Court of Appeals disagreed -- on his interpretation of the applicable state law, there is nothing for this Court to review.

The fact is that the trial judge's opinion and decision of March 8, 1978 were not directed to the case against

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* Judge Pollack's opinion is reprinted in John McGrath's petition at App. 1-16.

petitioner John McGrath. The judge had already dismissed the complaint as to John McGrath. He did so immediately following the entry of the verdict. (Petition, p. 15). His reason for that dismissal was that the jury had exonerated petitioner John McGrath, although finding his co-defendants liable. (Ibid.). Thus, the case of petitioner John McGrath is a case separate and apart from that of the other petitioners. John McGrath's case does not depend on whether the Court of Appeals was in error in giving the interpretation to New York law which led it to reinstate the jury's verdict against John McGrath's co-defendants but whether the Court of Appeals rendered a decision in conflict with decisions of this Court and other Courts of Appeals when it reversed the judgment of dismissal as to John McGrath on the ground that the jury, as the Court of Appeals construed its verdict, had found John McGrath liable. (Petition, pp. 18-29).

John McGrath's alternative arguments that the mandate of the Court of Appeals violates the Constitution in

that it delegates Article III powers to respondents, conditions petitioner's right to a new trial and impairs petitioner's contribution rights also depend, not on New York law, but on federal law. (Id. pp. 29-41). None of these arguments are answered by the respondents in any of their briefs.

CONCLUSION

A writ of certiorari should issue to review the judgment and opinions of the Second Circuit.

Respectfully Submitted,

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